

House Bill 485 (AS PASSED HOUSE AND SENATE)

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for the comprehensive revision of provisions regarding revenue and
3 taxation; to provide for the service of subpoenas by certified mail; to expand the right to an
4 administrative hearing with respect to claims for sales and use tax refunds; to provide for
5 certain definitions and change certain provisions regarding sales and use tax refunds; to
6 provide for the service of summons of garnishment by certified mail; to enable individual
7 taxpayers who take the qualified education tax credit to file electronically by changing the
8 provisions regarding when the letter of confirmation of donation shall be attached to the
9 return; to provide for alternative tax credits for base year port traffic; to provide for
10 procedures, conditions, and limitations; to provide for powers, duties, and authority of the
11 state revenue commissioner; to provide for effective dates; to provide for applicability; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 This Act shall be known and may be cited as the "Improved Taxpayer Customer Service Act
16 of 2009."

17 **SECTION 2.**

18 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
19 amended by revising paragraph (4) of subsection (a) of Code Section 48-2-8, relating to
20 powers of the state revenue commissioner, as follows:

21 "(4) Subpoena the attendance of witnesses and require the production of books, papers,
22 records, and documents and, subject to the rights of the taxpayer as to rights of privacy
23 guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine
24 such items and the books, records, inventories, or business of any taxpayer or of any
25 fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer

or knowledge pertinent to the investigation or inquiry. The subpoena may be served by the commissioner or the commissioner's authorized representative to such person at the person's last known address by registered or certified mail or statutory overnight delivery, return receipt requested. If such person refuses to accept service of a subpoena by registered or certified mail or statutory overnight delivery, the subpoena shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service, and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the subpoena. This liability shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner."

SECTION 3.

Said title is further amended by revising Code Section 48-2-35, relating to tax refunds, as follows:

"48-2-35.

(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have been erroneously or illegally assessed and collected from such taxpayer under the laws of this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except as provided in subsection (b) of this Code section, on the amount of the taxes or fees at the rate of 1 percent per month from the date of payment of the tax or fee to the commissioner. For the purposes of this Code section, any period of less than one month shall be considered to be one month. Refunds shall be drawn from the treasury on warrants of the Governor issued upon itemized requisitions showing in each instance the person to whom the refund is to be made, the amount of the refund, and the reason for the refund.

(b) No interest shall be paid if the taxes or fees were erroneously or illegally assessed and collected due to the taxpayer failing to claim any credits listed in Article 2 of Chapter 7 of this title on or before the due date for filing the applicable income tax return, including any extensions which have been granted.

(c)(1)(A) A claim for refund of a tax or fee erroneously or illegally assessed and collected may be made by the taxpayer at any time within three years after:

(i) The date of the payment of the tax or fee to the commissioner; or

(ii) In the case of income taxes, the later of the date of the payment of the tax or fee to the commissioner or the due date for filing the applicable income tax return, including any extensions which have been granted.

(B) Each claim shall be filed in writing in the form and containing such information as the commissioner may reasonably require and shall include a summary statement of

the grounds upon which the taxpayer relies and an identification of the transactions being contested.

(C) Should any person be prevented from filing such ~~an application~~ a claim because of service of such person or such person's counsel in the armed forces during such period, the period of limitation shall date from the discharge of such person or such person's counsel from such service.

(D) A claim for refund may not be submitted by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated.

(2) In the event the taxpayer desires a conference or hearing before the commissioner or the commissioner's delegate in connection with any claim for refund, he or she shall specify such desire in writing in the claim and, if the claim conforms with the requirements of this Code section, the commissioner shall grant a conference at a time he or she shall reasonably specify. A taxpayer may contest any claim for refund that is denied in whole or in part by filing with the commissioner a written protest at any time within 30 days from the date of notice of refund denial or partial payment. Such 30 day period shall be extended for such additional period as may be agreed upon in writing between the taxpayer and the commissioner during the initial 30 day period or any extension thereof. In the event the taxpayer wishes to request a conference, that request shall be included in the written protest. All protests shall be prepared in the form and contain such information as the commissioner shall reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies, an identification of the transactions being contested, and the reasons for disputing the findings of the commissioner. The commissioner shall grant a conference before the commissioner's designated officer or agent at a time specified and shall make reasonable rules governing the conduct of conferences. The discretion given in this Code section to the commissioner shall be reasonably exercised on all occasions.

(3) The commissioner or ~~his or her~~ the commissioner's delegate shall consider information contained in the taxpayer's claim for refund, together with such other information as may be available, and shall approve or ~~disapprove~~ deny the taxpayer's claim and notify the taxpayer of ~~his or her~~ the action.

(4) Any taxpayer whose claim for refund is denied by the commissioner or ~~his or her~~ the commissioner's delegate or whose claim is not decided by the commissioner or ~~his or her~~ the commissioner's delegate within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of the county of the residence of the taxpayer, except that:

(A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right to bring an action for a refund in the superior court of the county in which is located the

taxpayer's principal place of doing business in this state or in which the taxpayer's chief or highest corporate officer or employee resident in this state maintains ~~his or her~~ an office; or

(B) If the taxpayer is a nonresident individual or foreign corporation having no place of doing business and no officer or employee resident and maintaining ~~his or her~~ an office in this state, the taxpayer shall have the right to bring an action for a refund in the Superior Court of Fulton County or in the superior court of the county in which the commissioner in office at the time the action is filed resides.

(5) An action for a refund pursuant to paragraph (4) of this subsection ~~may~~ shall not be brought by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated.

(6)(A) No action or proceeding for the recovery of a refund under this Code section shall be commenced before the expiration of one year from the date of filing the claim for refund unless the commissioner or ~~his or her~~ the commissioner's delegate renders a decision on the claim within that time, nor shall any action or proceeding be commenced after the later of:

(i) The expiration of two years from the date the claim is denied; or

(ii) If a valid protest is filed under paragraph (2) of this subsection, 30 days after the date of the department's notice of decision on such protest.

(B) The ~~two-year~~ period prescribed in this paragraph for filing an action for refund shall be extended for such period as may be agreed upon in writing between the taxpayer and the commissioner ~~during the two-year~~ prior to the expiration of such period or any extension thereof.

(d) In the event any taxpayer's claim for refund is approved by the commissioner or ~~his or her~~ the commissioner's delegate and the taxpayer has not paid other state taxes which have become due, the commissioner or department may ~~set off the unpaid taxes~~ offset any existing liabilities against the refund. ~~When~~ Once the ~~setoff~~ offset authorized by this subsection ~~is exercised~~ occurs, the refund shall be deemed granted and the amount of the ~~setoff~~ offset shall be considered for all purposes as a payment toward the particular tax ~~debt~~ which is being set off liabilities at issue. Any excess refund ~~remaining amount~~ after the setoff has any offsets have been applied shall be refunded to the taxpayer at the same time the offset is taken.

(e) This Code section shall not apply to taxes paid ~~or stamps purchased~~ for alcoholic beverages pursuant to Title 3.

(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall apply."

SECTION 4.

Said title is further amended by revising Code Section 48-2-35.1, relating to sales and use tax refunds, as follows:

"48-2-35.1.

(a) Except as provided for in this subsection, for the purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term 'taxpayer' as used in Code Section 48-2-35 shall mean a dealer as defined in Code Section 48-8-2 that collected and remitted erroneous or illegal sales and use taxes to the commissioner. A person that has erroneously or illegally paid sales taxes to a dealer that collected and remitted such taxes to the commissioner may elect to seek a refund from such dealer. Alternatively, such person may file a claim for refund either initially with the commissioner or with the commissioner after being unable to obtain a refund from such dealer and shall also be considered a taxpayer for purposes of filing a claim for refund under Code Section 48-2-35, but only if such person:

(1) When filing a refund claim initially with the commissioner, provides the department with a notarized form prescribed by the commissioner and executed by the dealer affirming that the dealer:

(A) Has not claimed or will not claim a refund of the same tax included in the person's request for refund;

(B) Will provide to the person any information or documentation in the dealer's possession needed for submission to the department to support or prove the claim for refund;

(C) Has remitted to the state the taxes being sought for refund; and

(D) Has not taken or will not take a credit for taxes being sought for refund; or

(2)(A) When filing a refund claim with the commissioner after being unable to obtain a refund from such dealer, such person provides a letter or other information as may be requested by the commissioner that either:

(i) The dealer refused or was unable to refund the erroneously or illegally assessed and collected taxes; or

(ii) The dealer did not act upon the person's written request for refund of the erroneously or illegally assessed and collected taxes within 90 days from the date of such request for refund.

(B) Upon acceptance of such letter or information by the commissioner, the dealer shall be deemed to have assigned all rights to the refund to such person.

(b) If a certificate or exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase tangible personal property or taxable services without the payment of sales and use tax has not been obtained and used prior to

purchasing such tangible personal property or taxable services, a refund of sales and use taxes shall be made without interest."

SECTION 5.

Said title is further amended by revising Code Section 48-2-55, relating to garnishments and levies, by revising paragraph (2) of subsection (b) as follows:

"(2) The commissioner or ~~his~~ the commissioner's authorized representative may use garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the state which are imposed by this title or which the commissioner or the department is responsible for collecting under any other law. Garnishment may be issued by the commissioner or ~~his~~ the commissioner's authorized representative against any person whom ~~he~~ the commissioner believes to be indebted to the defendant or who has property, money, or effects in ~~his~~ such person's hands belonging to the defendant. The summons of garnishment shall be served by the commissioner or ~~his~~ the commissioner's authorized representative, shall be served at least 15 days before the sitting of the court to which the summons is made returnable, and shall be returned to either the superior court or the state court of the county in which the garnishee is served. The commissioner or ~~his~~ the commissioner's authorized representative shall enter on the execution the names of the persons garnished and shall return the execution to the appropriate court. All subsequent proceedings shall be the same as provided by law regarding garnishments in other cases when judgment has been obtained or execution issued. In addition to any other methods of service, the summons of garnishment may be served by the commissioner or the commissioner's authorized representative to the garnishee by registered or certified mail or statutory overnight delivery, return receipt requested. Either the return receipt indicating receipt by the garnishee or the envelope bearing the official notification from the United States Postal Service of the garnishee's refusal to accept delivery of such registered or certified mail or statutory overnight delivery shall be filed with the clerk of the court in which the garnishment is pending. If statutory overnight delivery was accomplished through a commercial firm as provided under paragraph (1) of subsection (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the envelope bearing the official notification of such commercial firm of the garnishee's refusal to accept delivery shall be filed with the clerk of the court in which garnishment is pending. If a garnishee refuses to accept service of a summons of garnishment by registered or certified mail or statutory overnight delivery, the summons of garnishment shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service and the garnishee shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the summons of

garnishment. This liability shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner."

SECTION 6.

Said title is further amended in Code Section 48-7-29.16, relating to qualified education tax credits, by revising subsection (g) as follows:

"(g) In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit."

SECTION 7.

Said title is further amended by adding a new Code section to read as follows:

"48-7-40.15A.

(a) As used in this Code section, the term:

(1) 'Base year port traffic' means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that in the event the total amount actually imported into this state or exported out of this state during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's), then 'base year port traffic' means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's).

(2) 'Business enterprise' means any business located in a tier two or tier three county established pursuant to Code Section 48-7-40 and in a less developed area established pursuant to Code Section 48-7-40.1 and which qualifies and receives the tax credit under Code Section 48-7-40.1 and which:

(A) Consists of a distribution facility of greater than 650,000 square feet in operation in this state prior to December 31, 2008;

(B) Distributes product to retail stores owned by the same legal entity or its subsidiaries as such distribution facility; and

(C) Has a minimum of 8 retail stores in this state in the first year of operations.

(3) 'Port traffic' means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility.

(4) 'Product' means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(b)(1) In the case of any business enterprise which has increased its port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed an additional \$1,250.00 job tax credit against the tax imposed under this article.

(2) The tax credit described in this subsection shall be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 and shall be in addition to the credit allowed under Code Section 48-7-40; provided, however, that such credit shall not be allowed during a year if the port traffic does not remain above the minimum level established in this Code section.

(c) No business enterprise shall be authorized to claim the credits provided for in both subsection (b) of this Code section and subsection (b) of Code Section 48-7-40.15 on a tax return for any taxable year unless such business enterprise has increased its port traffic of products during the previous 12 month period by more than 20 percent above its base year port traffic and has increased employment by 400 or more no sooner than January 1, 1998.

(d)(1) The credit granted under this Code section shall be subject to the following conditions and limitations:

(2) For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's state income tax return which shall set forth the following information, as a minimum, in addition to the information required under Code Sections 48-7-40 and 48-7-40.2 or 48-7-40.7:

(A) A description of how the base year port traffic and the increase in port traffic was determined;

(B) The amount of the base year port traffic;

(C) The amount of the increase in port traffic for the taxable year, including information which demonstrates an increase in port traffic in excess of the minimum amount required to claim the tax credit under this Code section;

(D) Any tax credit utilized by the taxpayer in prior years;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years.

(3)(A) Any tax credit claimed under subsection (b) of this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, provided that the increase in port traffic remains above the minimum levels established in Code Section 48-7-40 and this Code section, respectively.

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 and taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer.

(e) No tax credit may be claimed and allowed pursuant to this Code section for any jobs created on or after January 1, 2015."

SECTION 8.

(a) Except as otherwise provided in this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Section 6 of this Act shall become effective upon this Act's approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2008.

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.